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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 BONA FIDE CONGLOMERATE, INC.,
12 Plaintiff,

13 v.

14 SOURCEAMERCA; PRIDE
15 INDUSTRIES, INC.; KENT, CAMPA &
16 KATE, INC.; SERVICESOURCE, INC.;
17 JOB OPTIONS, INC.; GOODWILL
18 INDUSTRIES OF SOUTHERN
19 CALIFORNIA; LAKEVIEW CENTER,
20 INC.; THE GINN GROUP, INC.;
21 CORPORATE SOURCE, INC.; CW
22 RESOURCES; NATIONAL COUNCIL
23 OF SOURCEAMERICA EMPLOYERS;
24 and OPPORTUNITY VILLAGE, INC.,

25 Defendants.

26 BONA FIDE CONGLOMERATE, INC.,
27 Counterclaimant,

28 v.

29 BONA FIDE CONGLOMERATE, INC.;
30 and RUBEN LOPEZ,
31 Counterdefendants.

Case No.: 3:14-cv-00751-GPC-AGS

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
FILE DOCUMENTS UNDER SEAL**

[ECF No. 530]

1 On July 13, 2018, Bona Fide Conglomerate, Inc. (“Bona Fide”) filed a motion for
2 leave to file documents under seal. (ECF No. 530.) The documents Bona Fide seeks to seal
3 relate to its motion to exclude Defendant SourceAmerica’s expert Mary Karen Wills. (ECF
4 No. 532.) Bona Fide explained in its motion that while it did not believe that sealing the
5 information at issue was appropriate, the documents involved had been marked
6 “confidential” by SourceAmerica’s counsel. (ECF No. 530 at 2–3.) On July 19, 2018, the
7 Court deferred a ruling on the motion. (ECF No. 533 at 4.) Noting that a motion to seal
8 must present compelling reasons for overcoming the default rule that court filings are
9 available to the public, the Court ordered SourceAmerica to file a memorandum explaining
10 why sealing this information was appropriate. SourceAmerica filed a timely response.
11 (ECF No. 538.)

12 SourceAmerica explains that the information at issue in the motion should be sealed
13 because it relates to Non-Profit Affiliates’ responses to Sources Sought Notices or
14 Opportunity Notices. (ECF No. 538 at 6.) As SourceAmerica explains, the policy of
15 protection envisioned in the Procurement Integrity Act, Federal Acquisition Regulations,
16 and Trade Secrets Act demonstrate that the information Wills discusses in her expert reports
17 and deposition amounts to trade secret information. This is because the AbilityOne
18 Program, the program at issue in this case, uses this information to select procurement bids.
19 The Ninth Circuit has recognized the protection of trade secret information as a compelling
20 reason to seal court filings. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179
21 (9th Cir. 2006). And as courts have recognized, public disclosure of procurement bid
22 information threatens the integrity and efficiency of the government procurement process.
23 *Cf. Metric Sys. Corp. v. United States*, 13 Cl. Ct. 504, 506–07 (1987). The Court agrees
24 with SourceAmerica that Wills’ discussion of this information presents a compelling reason
25 for sealing the documents filed at ECF Nos. 532-4 (expert report), 532-5 (expert rebuttal
26 report), and 532-7 (deposition transcript). The Court therefore GRANTS the motion to seal
27 as to these documents.

28 SourceAmerica has clarified, however, that not all of the information Bona Fide has

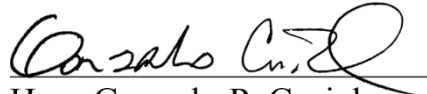
1 asked to be sealed includes trade secret information. SourceAmerica thus does not oppose
2 the public filing of the entire documents filed at ECF Nos. 532-1, 532-2, 532-3, 532-6, 532-
3 8, and 532-10. (*See* ECF No. 538 at 13–14.) Because none of the parties believe the
4 information in these document need be sealed, the Court DENIES the motion to seal as to
5 these documents.

6 The Court finds it necessary to note that it rejects SourceAmerica’s assertion that the
7 fact that, during discovery, counsel happened to mark certain documents “confidential” or
8 “confidential – for counsel only” is not a compelling reason to seal documents filed with the
9 Court. Under the Second Amended Protective Order in this case, the parties agreed to
10 designate as confidential information they “believe[] should be subject to this Protective
11 Order.” (ECF No. 482-1 at 4.) Just because a party believes a particular document is, for
12 example, trade secret information does not make it so. Whether sealing a particular
13 document is appropriate is a determination for the Court, not the parties, to make.

14 In sum, the Court GRANTS in part and DENIES in part the motion to seal at ECF
15 No. 530. Bona Fide shall, within five days of the date this order is filed, withdraw its
16 motion to exclude Mary Karen Wills (ECF No. 532) and all attached exhibits, and refile
17 these documents publicly except for the sealing approved above. This refiling of Bona
18 Fide’s motion to exclude Mary Karen Wills will not alter the previously set briefing
19 schedule and hearing date. (*See* ECF No. 533.)

20 **IT IS SO ORDERED.**

21 Dated: July 31, 2018

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23 Hon. Gonzalo P. Curiel
24 United States District Judge
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